

## II. REMARKS

### ***APPLICANT RESPECTFULLY REQUESTS IN INTERVIEW PRIOR TO FURTHER EXAMINATION***

The Examiner is requested to reconsider the above-identified patent application as amended. It is believed that no new matter has been added, and favorable action is respectfully requested.

In the Office Action on page 2, claims 50-51 have been rejected under 35 U.S.C. 101. The Examiner contends these claims are directed to a medium which would encompass a signal within its scope.

In response, the rejection is respectfully traversed in that the rejection does not interpret the claims in light of the specification, as required. The specification does not mention "transitory" media. Although Applicant is not importing limitations from the specification into the claims, the meaning of claim terms must take into consideration the teachings of the specification.

However, the rejection of claims 50-51 pursuant to Sec. 101 is believed to be moot in view of the Examiner's determination at page 2 of the Office Action regarding a suitable amendment to the claims, and Applicant has amended claim 50 to carry out the Examiner's suggestion.

In the Office Action on page 5, claims 1, 3, 5, 7, 9, 11, 13, 15, 17-21, 23, 25, 27-29, 31 and 33-69 have been rejected under 35 U.S.C. 103(a). The Examiner contends these claims as unpatentable over Graff U.S. Patent 6,192,347.

Generally, Applicant apologizes for what appears to have been a repeated typo in the claims, responsible for a misunderstanding that appears to be the basis of the Office Action Sec. 103 claim rejections. Specifically, the claim element "terminal rent recovery period" is

recited a total of 27 times in claims 1, 17, 18, 36, 37, 38, 40, 42, 43-50, 52, 54-58 (twice in each of claims 43, 47-50), but is recited incorrectly, omitting the word "rent," as terminal recovery period in 22 of the 27 instances. However, the claim element is recited correctly, either explicitly or via claim dependence, at least once in each of claims 18, 48, 49, 50, 51, 58, 67, 68.

In view of the above-provided amendment to correct the typos, now every claim includes the element terminal rent recovery period. Because this claim element is not disclosed either explicitly or implicitly in the prior art cited in the Office Action, these corrections are believed to be sufficient to overcome all Sec. 103 rejections of claims not included among claims 18, 48, 49, 50, 51, 58, 67, 68, as discussed more fully below.

More particularly, the Examiner states the following in the Office Action at page 3, lines 13-16: "Claims 1, 3, 5, 7, 9, 11, 13, 15, 17-21, 23, 25, 27-29, 31, and 33-69 rejected under 35 U.S.C. 103(a) as being unpatentable over Graff US Patent 6,192,347."

As support for the Sect. 103(a) rejections, the Examiner states the following in the Office Action at page 5, line 22 - page 6, line 6:

"Even though Graff does not explicitly recite terminal recovery period, (applicant recites in the disclosure, 0064, Terminal Recover Period is a reserved time period at the end of the lease, during which to evict the lessee if the financing has not been satisfied). In addition, applicant as disclosed in the specification, Terminal Recovery Period is a Random number since the applicant is not using any disclosed formula(e) to determine the Terminal Recovery Period (see para 0065). Graff teaches in the event of default or insolvency, number of days landlord has provisioned for Terminal Recovery Period [Graff, col. 53 line 19 - col. 54, line 53]."

In response, Applicant respectfully traverses all Section 103(a) claim rejections and the quoted Examiner contentions.

In construing claims, "as an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever

enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." In re Morris, 127 F.2d 1048, 1054, 44 USPQ2D 1023, 1027 (Fed. Cir. 1997).

With respect to claim interpretation, the Examiner's attention is respectfully drawn to paragraph [0065] of the Specification, which teaches:

"More specifically, **a terminal rent recovery period is a period at the end of the lease on the residential estate for years interest of at least four months** - usually at least six months, preferably at least eight months, frequently at least a year, sometimes as much as a year and a half, and possibly even two years or more - during which the rent is essentially free, i.e., the sum of the (undiscounted) net rent payments during the terminal rent recovery period is zero or very close to zero, and in any case is no more than one-half the average (undiscounted) net rent payment over the portion of the lease term that precedes the terminal rent recovery period." (emphasis added).

Accordingly, the "terminal rent recovery period" must be at least four months in length, and the Examiner's contention that the "terminal rent recovery period" is a Random Number is incorrect.

Furthermore, the Office Action at pages 5-6, without evidence, construes terminal rent recovery period in a way that is contradicted by the meaning given to the term by the Specification, e.g., as taught in the above-quoted paragraph [0065]. The rejection is therefore improper.

As support for Applicant's traversals, note that the Specification does *not* recite "Terminal Recover Period" at paragraph [0064] as contended in the Office Action, but instead disclose in paragraph [0065] that a "terminal rent recovery period" has a length of at least four months. This is in contrast to the Examiner-construed time period. The period disclosed in US Patent 6,192,347: at col. 53, line 19 - col. 54, line 53 is a 10 day cutoff for current tenants to make late rent payments. If the Examiner contends that a 10 day cutoff for current tenants to pay late rent has any relation to a time period of at least four months during

which to recover lost rent after having "re-let the property to defray any deficiency"

(Specification, at para [0064]), or more so to the claimed terminal rent recovery period, then in view of the explicit contradiction in time at least, Applicant requires, pursuant to Sec. 132 and Rule 104, "information" as to how the cited art is being construed to reach this claim element. In the absence of this "information," the cited Examiner contentions are all improper. In sum, given para [0065] in the Specification, which discloses that a terminal rent recovery period is at least four months in length, there is an explicit contradiction to the Examiner's claim construction that the claimed terminal rent recovery period means "a Random number." Office Action at page 6.

At page 6, line 10 - page 9, line 8, the Office Action recites a lengthy list of claim elements relating to the various claims rejected under Section 103(a), and the Examiner contends that these elements are disclosed in US Patent 6,192,347 without providing any citation to support the contention. Accordingly, these rejections are improper rejections pursuant to Rule 104 and Sec. 132. Included in the lengthy list of claim elements are the following: "terminal recovery period," "residential estate for years," "augmented estate for years," "contingent equity interest," "primary equity interest," "secondary," "single-family dwelling," "eighteen months," "rental period arrearage," "escrow account payment arrearage," "arrearage penalty," "corresponding contingent equity interest," "secondary equity interest," "fractional interest in only one of a group." None of these claim elements are recited in US Patent 6,192,347. The Examiner's contentions that these claim elements are disclosed in US Patent 6,192,347 is in error and improper: none of three claim elements are recited in US Patent 6,192,347. Finally, if the Examiner disagrees, then Applicant requires, pursuant to Sec. 132 and Rule 104, that the Examiner provide "information" as to how and where the contended disclosures are manifested. In the absence of this required "information," the contentions and rejections in this regard are improper.

In sum, when the claims are properly construed, the claim element terminal rent recovery period is not disclosed in the art cited in the Office Action, nor is this claim element implied by the cited art.

If the Examiner disagrees and contends that the claim element terminal rent recovery period is disclosed in any prior art, then Applicant respectfully requires "information" pursuant to 35 U.S.C. Sec. 132 and Rule 104 as to precisely how the cited art discloses or manifests this claim element. Absent this required "information" the rejections are improper. Applicant submits that there is no teaching in the cited art of at least one claim limitation: terminal rent recovery period. Therefore a case of prima facie obviousness has not been made out, and the rejections are improper and erroneous.

With respect to the rejection based on Nonstatutory Double Patenting, the Office Action contends, at page 3, lines 13-16: "Claims 47-98 are rejected on the ground of nonstatutory double patenting over claims 1-28 of US Patent 6,192,347 and claims 1-199 of US Patent 7,908,202 since the claims, if allowed, would extend the "right to exclude" already granted in the patent(s)."

As support for the double patenting rejections, the Examiner states the following at page 4, lines 8-12:

"In the instant application, application has added an additional field valuation for a terminal recovery period, for which there is no formula(e) or a process defined on how said terminal recover period is produced. As disclosed, said terminal recovery period is a user determined preferred number for which Graff US Patents 7,908,202 and 6,192,347 teaches capability and concept for."

Applicant respectfully traverses the Examiner's claim rejections and responds, first, that the statement of the rejection is incorrect at least because there are not 98 claims in the instant application, only 69.

Second, the proper analysis should be directed toward a terminal rent recovery period.

See particularly, claims 48, 49, 50, 51, 58, 67, 68: each of these claims includes the claim element terminal rent recovery period, which is not recited in any prior art cited by the Examiner in the Office Action. Now all claims include this requirement.

Third, as to the meaning of the claim term, the MPEP 804 II advises

The specification can be used as a dictionary to learn the meaning of a term in the patent claim. *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999)("[W]ords in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning."); *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) ("Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings."). See also MPEP § 2111.01. Further, those portions of the specification which provide support for the patent claims may also be examined and considered when addressing the issue of whether a claim in the application defines an obvious variation of an invention claimed in the patent. *In re Vogel*, 422 F.2d 438, 441-42, 164 USPQ 619, 622 (CCPA 1970).

The instant Specification teaches specific information about the meaning of the claimed terminal rent recovery period in paragraph [0065], including that the terminal rent recovery period must be at least four months in length, as noted above. There is no such disclosure, express or implied, of a terminal rent recovery period in the art cited for the double-patenting rejection. The Examiner's proposed claim construction of the term as a mere "user preferred number" is explicitly contradicted by the Specification and is therefore improper. A prima facie case of obviousness double patenting has not been made out.

Fourth, in the Office Action at page 4, the Examiner contends that there is "no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant Application during prosecution of the application which matured into a patent." Applicant responds that ambiguity exists as to the antecedent for the last two words of the quote, i.e., "a patent," but that Applicant presumes that the Examiner is referring to US Patents 7,908,202 and 6,192,347. However, Applicant "was prevented from presenting claims corresponding to those

of the instant application during prosecution of the application which matured into a patent"

because each claim in the instant Application includes at least one claim element not disclosed in US Patents 7,908,202 and 6,192,347, including the claim element terminal rent recovery period.

Fifth, Applicant also traverses the Examiner's contention in the cited Office Action paragraph at page 4, lines 8-12 that "...said terminal recovery period is a user determined preferred number for which Graff US Patents 7,908,202 and 6,192,347 teaches capability and concept for" as an improper basis for a double patenting rejection because, if the contention were deemed true, this is a matter of patent domination, not a showing, pursuant to the Deere standards, of obviousness-type double patenting. The MPEP 804 II warns

Domination and double patenting should not be confused. They are two separate issues. One patent or application "dominates" a second patent or application when the first patent or application has a broad or generic claim which fully encompasses or reads on an invention defined in a narrower or more specific claim in another patent or application. Domination by itself, i.e., in the absence of statutory or nonstatutory double patenting grounds, cannot support a double patenting rejection. *In re Kaplan*, 789 F.2d 1574, 1577-78, 229 USPQ 678, 681 (Fed. Cir. 1986); and *In re Sarrett*, 327 F.2d 1005, 1014-15, 140 USPQ 474, 482 (CCPA 1964).

The double patenting rejection is improper for failure to set out a case of prima facie obviousness-type double patenting under the Deere standards by instead contending a case of patent domination. A valid reason to modify the cited art has not been provided, either.

Sixth, Applicant traverses the sufficiency of the contention that "...said terminal recovery period is a user determined preferred number for which Graff US Patents 7,908,202 and 6,192,347 teaches capability and concept for." There is no disclosure of the claim element terminal rent recovery period. Furthermore, if Applicant correctly understands the Examiner's purported evidentiary support for the rejection, the assertion that any data input to a digital computer ultimately is a user determined preferred number (e.g., that any keystroke is, in digital data processing, a user determined preferred number), does not disclose a claim element nor

render obvious the claim as a whole. If that contention were true, one could never patent a digital data processing system.

In sum, a prima facie case of obviousness-type double patenting has not been made out, and the rejections are therefor improper.

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**III. CONCLUSION**

With respect to the present application, the Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer, if any, and the prior art that it was made to avoid, may need to be revisited. Nor should a disclaimer, if any, in the present application be read back into any predecessor or related application.

**APPLICANT CLAIMS SMALL ENTITY STATUS.** The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235, and if any extension of time is needed to reply to said office action, this shall be deemed a petition therefore. Please direct all communication to the undersigned at the address given below.

Respectfully submitted,



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